FILE COPY

Office - Supreme Court, U.S.
FILED
AUG
ADMISSIONS

No. 254

In the
Supreme Court of the United States

OCTOBER TERM, 1958

UNITED STATES OF AMERICA ON THE RELATION OF MILDRED B. MCCANS, AND MILDRED B. MCCANS ~~ON~~ HER OWN BEHALF

Petitioner

v.

ARMOUR AND COMPANY, A Corporation

Respondent

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Mildred B. McCans,
2710 Avenue C
Fort Worth 5, Texas
Petitioner pro se

INDEX

Opinions Below 2

Jurisdiction 2

Statement of the Case 6

Reasons For Granting The Writ 8

Conclusion 11

Appendix

Appendix A — Opinion Below

Appendix B — Judgment of the District Court

Appendix C — Statutes and Regulations Involved

Cases:

	PAGE
Armour & Co. v. Bowles, **148** F. 2d **546**	7
Bridges v. U. S., **346** U. S. **209**	5
Dugan & McNamara v. U. S. **127** F. Supp. **801**, **130** Ct. Cls. **603**	11
U. S. v. Born, **209** F. 2d. **145**	10
U. S. v. Grainger, **346** U.S. **235**	5, 9, 10
U. S. v. Klinger, **199** F.2d. **545**, **345** U.S. **979**	9
United States ex rel Marcus v. Hess, **317** U.S. **537**	8
U. S. ex rel McCans v. Armour, **146** F. Supp. **546**, Aff'd **254** F.2d, **80**	2
U. S. v. Smith, **342** U.S. **225**	10

Other Authorities:

Contract Settlement Act of **1944**	5
Emergency Price Control Act of **1942**: **56** Stat **23**; **50** U.S.C.A., Appx. **1944** Ed., **901** et. seq.	7
Sec. **4**(a); **50** U.S.C.A. Appx., **904**(a)	7
Procedural Regulation No. **6** (**7** Federal Register **5087**) Appendix C-**3**	3, 5, 6, 7
Supplementary Order No. **9** (**7** Federal Register **5444**) Appendix C-**2**	3, 5
False Claims Act, Title **31**, U.S.C., Sections **231**-**233**-**235**.	3, 6, 11
Section **231**	4, 9, 10
Section **232** Appendix C-**1**	9
Section **232**, Clause (C) Appendix C-**1**	4, 8
Section **235**	9, 10, 11
Judicial Code, **28** U.S.C.A. Sections **1254** and **2101**	2
OPA Quarterly Report	6
Surplus Property Act, **50** U.S.C.A. Appx. **1611**	5
18 United States Code, Section **287**	10
Wartime Suspension of Limitations Act, **18** U.S.C.A., Sec. **3287**	3, 4, 5, 9, 10, 11

No

In the Supreme Court of the United States

OCTOBER TERM, 1958

In the Matter of

UNITED STATES OF AMERICA ON THE RELATION OF MILDRED B. McCANS, AND MILDRED B. McCANS ON HER OWN BEHALF

Petitioner

v.

ARMOUR AND COMPANY, A Corporation

Respondent

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES

The petitioner, Mildred B. McCans, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the cause on March 27, 1958.

Opinions Below

The opinion of the Court of Appeals is reported at 254 F. 2d. 90 (R. p.—). A copy is appended as Appendix A.

The opinion of the District Court is reported at 146 F. Supp. 546. (R. p.—). A copy is appended as Appendix B.

Jurisdiction

The judgment of the Court of Appeals was entered March 27, 1958. Petition for rehearing was denied April 23, 1958 (254 F. 2nd. 90).

Jurisdiction to issue the writ rests on Title 28, United States Code, Sections 1254 and 2101.

The jurisdiction of the court of first instance was predicated upon the following:

1. The suit is based upon a federal question.
2. The amount in controversy exceeds $3,000.00.
3. The acts of omission creating the offenses were committed in the District of Columbia.

Questions Presented

1. Does the present statute (31 U.S.C.A. Sections 231-233, 235) bar suits filed in the name of the United States on the relation of a former government employee for recovery of money unlawfully exacted from the United States where the information upon which the suit is founded was obtained by reason of his government employment?

2. Is the Wartime Suspension of Limitations Act (18 U.S.C.A. 3287, formerly Section 590(a)) applicable to civil actions for recovery of money or property loss to the government growing out of "indictable offenses" committed prior to July 1, 1944?

Statutes and Regulations Involved

The statutes and regulations involved in the present action are as follows:

1. The False Claims Act, 31 U.S.C., Sections 231-233, 235.

2. The Wartime Suspension of Limitations Act, 18 U.S.C., Section 3287 (former Section 590(a)).

3. OPA Supplementary Order No. 9 (7 F. R. 5444), set out as Appendix C-2.

4. OPA Procedural Regulation No. 6 (7 F.R. 5087), set out as Appendix C-3.

The pertinent portion of Section 231 of the False Claims Act provides as follows:

"Any person * * * who shall make or cause to be made, or present or cause to be presented, for payment or approval, to or by any person or officer in the civil, military, or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent * * * shall forfeit and pay to the United States the sum of $2,000, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit."

Section 232(C), is set out as Appendix C-1.

The Wartime Suspension of Limitations Act, 18 U. S. C. A. Sec. 3287, was originally enacted as temporary legislation on August 24, 1942, to suspend the running of statutes of limitation on certain wartime frauds until June 30, 1945, or such earlier date as the Congress or the President might designate. The measure was similar to the 1921-1927 extension to six years of the general three-year statute of limitations as to any "offenses involving the defrauding or attempt to defraud the United States", prompted by belated discovery of frauds committed during World War I. The World War I extension of the statute of limita-

tions reached only " * * * offenses * * * now indictable under any existing statutes * * *" See Bridges v. United States, 1952, 346 U.S. 209, 217, 218, 73 S.Ct. 1055, 97 L.Ed. 1557.

The World War II Act was amended in 1944, 58 Stat. 667, to provide for its expiration three years after the termination of hostilities of World War II as determined by the President or the Congress. See United States v. Grainger, 1953, 346 U.S. 235, at page 245, 73 S.Ct. 1069, at page 1075, 97 L.Ed. 1575. In October, 1944, 58 Stat. 781, a clause was added more specifically covering the handling of property under the Surplus Property Act of 1944, 50 U.S.C.A. Appendix, Sec. 1611 et seq. (see United States v. Grainger, supra, 346 U.S. at page 246, 73 S.Ct. at page 1075) and in 1948 the Act took its present form as permanent legislation applicable 'When the United States is at war * * *'".

At all times material to the complaint, there was in effect Supplementary Order No. 9 and Procedural Regulation No. 6, issued by the Office of Price Administration. Supplementary Order No. 9 (7 Fed. Reg. 5444) provided that any person who had entered into or proposed to enter into a Government contract or subcontract, who believed that an established maximum price impeded or threatened to impede the production of a commodity which was essential to the prosecution of the war, might apply to the Office of Price Administration for adjustment of the maximum price of that commodity in accordance with the

procedures and the stipulated form provided by Procedural Regulation No. 6 (7 Fed. Reg. 5087). Copies of the adjustment regulations are set out as Appendix C-2 and Appendix C-3.

Statement of the Case

This is a qui tam action brought by the petitioner as relator on behalf of the United States against Armour and Company pursuant to the False Claims Act (31 U.S.C. Sections 231-233, 235).

The complaint alleges that between the dates of July 1, 1942, and February 15, 1943, Armour and Company sold and delivered to government war procurment agencies dressed hog carcasses, fresh and cured fabricated pork cuts, and canned pork products at prices in excess of maximum ceiling prices established by the Office of Price Administration; that it presented bills or claims to the United States and received therefor the amounts billed, and failed to apply to OPA for the excess, totaling approximately $4,000,000.00, to which it was not entitled; and that it thereby became liable to the United States in damages and forfeitures under the False Claims Act.

There is found in OPA Quarterly Reports (2nd Quarter, p.43), the following:

"* * * special provision has been made for commodities and services which are essential to the war program and which are the subject of a contract with the United States, or a sub-contract thereunder. PR

No. 6, issued on July 1, 1942, permits the filing of such applications * * * The regulation permits an applicant the privilege of charging the requested higher price, pending the determination of the application, with final settlement to be made in accordance with the ultimate decision. When an applicant is willing to proceed on this basis, this privilege avoids delay in the sale and purchase of vital military items * * * ."

Failure to file applications for increases in established maximum prices was a violation of Section 4(a) of the Emergency Price Control Act of 1942, 50 U.S.C.A.,Appx., 904(a), which reads, in pertinent part, as follows:

"(a) It shall be unlawful, regardless of any contract agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity,*** or otherwise to do or omit to do any act, in violation of any regulation or order ***"

As a Claims Examiner in the Office of The Quartermaster General, your petitioner examined suits and claims filed against the Government by several meat packers for adjustment of beef prices, pursuant to applications filed in the Office of Price Administration, more particularly described in Armour v. Bowles, 148 F. 2nd. 546. In the course of such examination she found evidence of possible overcharges for other meat products, and suggested to her superiors that examination be extended to include possible counter-claims against all meat packers whose suits and claims were before the agency for report. The District Court decided that this suggestion was

"information and evidence in the possession of the United States, its officers and employees at the time suit is filed", within the meaning of Section 232 (C) of the False Claims Act, and the Court of Appeals has affirmed.

Reasons For Granting The Writ

The District Court has decided, and the Court of of Appeals has affirmed important questions of federal law which have not been, but should be, settled by this court.

I

The District Court decided, and the Apellate Court affirmed, as follows:

> " * * * that the present statute was intended to prevent a former government employee from bringing an action of this sort, where the information upon which the suit is founded was obtained by reason of his government employment. I therefore conclude on this basis also that relator may not maintain her action."

For the first time since the Hess decision a Federal Court has ruled in the instant case on the question of whether a government employee may use information obtained in the course of his employment to prosecute an action for recovery of money filched from the United States Treasury, and, in so doing, has overruled this Court's designation of "any person" authorized to bring such suit. United States ex rel Marcus v. Hess, 317 U.S. 537.

The Court below has ruled that the instant case is barred by the six-year limitation provided by Section 235, holding that the Wartime Suspension of Limitations Act was not applicable to civil actions for redress of the offenses charged by the complaint until after the Act was amended by the Contract Settlement Act of 1944, deducting therefrom the period preceding July 1, 1944.

The United States Supreme Court has not specifically passed upon the question as to whether the Wartime Suspension of Limitations Act is applicable to the six-year statute of limitation, Section 235, relating to proceedings under Sections 231-232, against offenses "indictable" prior to July 1, 1944.

In United States v. Klinger, 2 Cir., 1952, 199 F.2d.645, the Court read the Wartime Suspension of Limitations Act so as to avoid a situation where earlier offenses might be prosecuted although later ones were barred. The result was affirmed by an evenly divided Court, United States v. Klinger, 1953, 345 U.S. 979, 74 S.Ct. 1129, 97 L.Ed. 1393.

The case of United States v. Grainger, 1953, 346 U.S. 235, 73 S.Ct. 1069, 1074, 97 L.Ed. 1575, involved a prosecution where the defendant was charged with having violated Section 287 by presenting claims to the Commodity Credit Corporation in connection with its wool handling program knowing such claims to be "false, fictitious, or fraudulent." That section is referred to by

the Supreme Court as constituting the false claims clause of the False Claims Act, 346 U.S. at page 240, 73 S.Ct. at page 1072. The Court in the Grainger case holds that one who knowingly makes a "false, fictitious, or fraudulent" claim against the Commodity Credit Corporation in connection with its wool handling program in violation of Section 287 has committed an "offense" involving fraud within the scope of the Wartime Suspension of Limitations Act.

In United States v. Smith, 1951, 342 U.S. 225, 72 S.Ct. 260, 96 L.Ed. 252, it was held that the Suspension Act applied only to matters prior to the termination of hostilities on December 31, 1946.

In United States v. Borin, 5 Cir., 1954, 209 F.2d 145, in an action by the Government under the False Claims Act growing out of alleged overpayments on illegal claims under the wartime meat subsidy program, it was held that the six-year limitation contained in Section 235 applied to suits by the Government as well as to those brought by an informer. In that case it was held that the six-year limitation contained in Section 235 of 31 U.S.C.A. barred the claim of the United States for double damages and statutory recovery for false claims made against the United States between 1943 and 1946. The Court held that there was no statute which ran against the Government's common law remedy for fraud. The holding of the Borin case was that the Government was barred by Section 235 from its remedies under Section 231 of the False Claims Act but not precluded from com-

mon law remedies for fraud. The alleged false claims in that case were all made between 1943 and 1946 during wartime, but no question seems to have been raised concerning the possible applicability of the Wartime Suspension of Limitations Act, 18 U.S.C.A. p. 3287.

In Dugan & McNamara v. United States, 127 F.Supp. 801, 804, 130 Ct.Cls. 603, the Court of Claims said:

> "The fraudulent acts alleged here occured during 1944 and 1945 and the six-year period of limitations applicable, 31 U.S.C.A. 235, was tolled under the Suspension Act that was in force from 1944 through 1948. On June 25, 1948, the Suspension Act was again amended in connection with the codification of Title 18 of the United States Code," and in a footnote, same page, noted that "although certain of the alleged acts occurred prior to July 1, 1944, the date of enactment of the 1944 amendment, the suspension was to apply 'where the existing statute of limitation has not yet fully run.'" No computation of time running against those acts was there made, such as the District Court has made in the instant case.

Conclusion

If the decision below is permitted by this court to stand, the United States will be deprived of the benefits intended by Congress in the adoption of legislation for protection of the government's interest.

Your petitioner, therefore, prays that writ of certiorari issue to the United States Court of Appeals for the District of Columbia Circuit in this cause.

Respectfully submitted,

MILDRED B. McCANS

Petitioner pro se

APPENDIX A

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 13729

UNITED STATES OF AMERICA, ex rel. MILDRED B. McCANS and MILDRED B. McCANS on her own behalf, APPELLANT

v.

ARMOUR AND COMPANY, a Corporation, APPELLEE

On Appeal from the United States District Court for the District of Columbia

---

Decided March 27, 1958

Mrs. Mildred B. McCans, appellant, *pro se*.

Mr. Perry S. Patterson, with whom *Mr. Herbert J. Miller, Jr.*, was on the brief, for appellee.

Before EDGERTON, *Chief Judge*, and DANAHER and BURGER, *Circuit Judges*.

PER CURIAM: In our opinion the District Court decided the critical issues correctly. *United States on relation of Mildred B. McCans* v. *Armour & Company*, 146 Fed. Supp. 546 (D.C.D.C. 1956).

Affirmed.

BURGER, *Circuit Judge*, heard oral argument but did not participate in consideration or decision of this case.

communication which is essential for proper treatment of illness, by assuring the patient that his disclosures will be kept secret. This policy is "particularly clear and strong" where mental patients are concerned.[4] Where the "patient" knows that the doctor is there to obtain evidence rather than to give treatment, there is no inducement to convey confidences and, consequently, no need to protect his communications against disclosure.

Here the psychiatrist's purpose was unquestionably testimonial, but it does not appear that the decedent was aware of that fact. Her normal assumption would have been that the doctor who was examining her was doing so qua doctor, not qua bank investigator. To admit the doctor's testimony in these circumstances would make the patient's rights dependent on the doctor's intentions. The statute, however, is designed for the patient's protection. Her frame of mind, therefore, rather than the doctor's, should determine whether the statute applies.[5] Unless it appears that she submitted to examination with knowledge that the doctor might broadcast his findings, her confidences should be respected. To make the testimony competent, it must be found from the record not only that the purpose of the examination was testimonial, but also that such purpose was clearly announced to the person examined or her legal representative. No such finding being possible here, the testimony should have been excluded.

Although there was other evidence that decedent was mentally incompetent to execute the will, it cannot be said that the inadmissible testimony was merely cumulative and without prejudicial effect upon the jury. I would therefore reverse and remand for a new trial.

[4] Taylor v. United States, 95 U.S. App. D.C. at 376, 222 F. (2d) at 401, quoting Guttmacher and Weihofen, Psychiatry and the Law (1952) 272: "The psychiatric patient confides more utterly than anyone else in the world. . . . It would be too much to expect them to do so if they knew that all they say—and all that the psychiatrist learns from what they say—may be revealed to the whole world from a witness stand."

[5] The witness' opinion that decedent did not think there was a patient-physician relationship is, in my judgment, not sufficient, in the light of the circumstances, to support a finding that such was in fact her state of mind.

United States District Court for the District of Columbia

UNITED STATES OF AMERICA, ON RELATIONS OF MILDRED B. MCCANS, AND MILDRED B. MCCANS ON HER OWN BEHALF, PLAINTIFF,

v.

ARMOUR AND COMPANY, A CORPORATION, DEFENDANT.

FALSE CLAIMS ACT; INFORMATION IN POSSESSION OF UNITED STATES

1. In a qui tam action under the False Claims Act where relator, a former U. S. Government employee, did on occasions during her employment bring her claim of overceiling prices charged by defendant to the attention of her superiors, this was sufficient to point out the wrongdoing and make the evidence or information already in its possession of value to the United States, and was sufficient, if true, to justify legal proceedings by the United States, consequently the evidence or information was no longer latent, by reason of relator's own acts prior to termination of her employment. The Court was therefore without jurisdiction to proceed under these circumstances because it has been made to appear that this suit was based upon "evidence or information in possession of the United States" at the time the suit was brought.
2. The False Claims Act in its present form was intended to prevent a former government employee from bringing a qui tam action where the information upon which the suit is founded was obtained by reason of his government employment.
3. The statute of limitations under the False Claims Act was not suspended by the Wartime Suspension of Limitations Act, but in 1944 Congress in the Contract Settlement Act amended the language of the Suspension of Limitations Act by deleting the term "now indictable". This brought the False Claims Act within its purview, but it was not effective until July 21, 1944. The deletion of the words "now indictable" in the 1944 Act leads to the conclusion that the Suspension Act then became applicable to all actions involving fraud against the United States, whether the Government seeks redress by criminal or civil means. A contention therefore that the Act, as originally enacted and before the amendment, applied to civil cases is without support.
4. 18 U.S.C. 590(a); 31 U.S.C. 231, 233, 235; 50 U.S.C. App. 901 et seq., cited or construed.

Civil Action No. 3673-54. November 27, 1956.

CARL L. SHIPLEY and ROY ST. LEWIS for the plaintiff.

PERRY S. PATTERSON, HERBERT J. MILLER, JR. and FREDERICK M. ROWE for the defendant.

OPINION

DAVID A. PINE, Judge: This is a qui tam action under 31 U.S.C. 231-233 and 235, sometimes referred to as the False Claims Act. It is brought in the name of the United States by relator Mildred B. McCans. It alleges the commission by defendant of certain wrongful acts hereinafter set forth, and seeks to recover damages and forfeitures. The statute permits the United States to intervene, but this it has declined to do, by formal notice. The case now comes before me on motions for summary judgment, filed by relator and defendant.

The wrongful acts are of a pecuniary nature and are alleged to have been committed between July 1, 1942, and February 15, 1943. During this period the Emergency Price Control Act of 1942 (50 U.S.C. App. 901 et seq.) and certain maximum price regulations and orders issued pursuant thereto were in effect. Among them was a price regulation establishing the maximum ceiling price which packers and processors might lawfully charge for sales of dressed hog carcasses and wholesale pork

cuts, There were also in effect supplementary order No. 9[1] and procedural regulation No. 6,[2] the former providing in brief that any person who had entered into or proposed to enter into a government contract, and who believed that an established maximum price impeded the production of a commodity which was essential to the prosecution of the war, might apply to the Office of Price Administration for adjustment of the maximum price of that commodity in accordance with the procedures provided in procedural regulation No. 6. Pending the issuance of an order granting or denying such an application, the seller could make deliveries to government war procurement agencies at prices requested therein; and in the event of denial of the application in whole or in part, the price would be revised downward and the applicant required to refund the excess.

Relator alleges that defendant sold and delivered to government war procurement agencies between the dates above set forth dressed hog carcasses, fresh and cured fabricated pork cuts, and canned pork products at prices in excess of the maximum ceiling prices, that it failed to apply to the Office of Price Administration for such increases, and that its acts were a wilful evasion of the maximum price regulations and price adjustment regulations and in violation of the Emergency Price Control Act. Following this, she alleges that defendant presented to officers of the United States for payment and allowance, invoices for dressed hog carcasses, fabricated pork cuts, and canned pork products at prices in excess of the maximum ceiling prices, and in this connection, presented claims to such officers, known by defendant to be false and fraudulent, and received payment therefor of various sums of money to which it was not entitled, thereby becoming liable to the United States under the False Claims Act. In consequence, she charges that the United States made overpayments in the sum of approximately $4,000,000, and claims damages and forfeitures under the Act of approximately $8,000,000, of which she would be entitled to receive personally not in excess of one-quarter, together with reasonable expenses and costs.

Defendant has answered, denying these charges and setting forth numerous affirmative defenses. An extensive deposition of relator has been taken, and numerous exhibits connected therewith have been filed, along with affidavits. As above stated, both the relator and defendant have filed motions for summary judgment. Examination of her deposition herein reveals the following facts and conclusions reached by her, viz.:

Relator commenced working for the United States in 1940, and was employed in the Quartermaster Corps of the Army from that time until her services were terminated on November 5, 1951. From 1944 until the termination of her employment, she was a claims examiner in the office of the Quartermaster General. In that capacity her duties consisted of auditing claims evidenced by contracts, invoices, etc., made by meat packers against the United States for meat and other articles sold to the Quartermaster Corps of the Army, auditing procurement records, and verifying that the prices charged were in accord with contract provisions and ceilings established by the Office of Price Administration.

In 1947 and 1948 she was assigned to work in connection with a suit brought by defendant, known as the Beef Refund Suit (Armour v. Bowles, 148 F. (2d) 546) and in 1949 and 1950 she was assigned to work on a suit known as the Icing Charges Case (Armour and Co. v. United States, 102 Fed. Supp. 987) both of which related to sales by defendant to the United States under OPA Regulations and resulted in recovery by defendant. Her duties included research to ascertain what defenses or counterclaims were available to the United States. She also examined during her employment the Quartermaster file containing abstracts of bids and other documents relating to defendant's pork contracts, and concluded from her examination of this file that defendant had charged over-ceiling prices on pork products sold to the government during the period involved in this suit. Also during this period of employment she examined OPA records at the National Archives office to ascertain whether defendant had filed Procedural 6 applications as well as price regulations in the RFC warehouse, where OPA records in Washington were filed, and the Quartermaster procurement records in an Alexandria warehouse. On the basis of this examination, she concluded that no procedural 6 applications had been filed by defendant, covering the sales of pork to the Federal government prior to April 1943, and as early as 1949 concluded that defendant had made over-ceiling sales of pork products to the Quartermaster Corps in the period from July 1942 to January 1943.

In January 1951, at her request, she was transferred to the office of the Quartermaster General in Chicago, Illinois, so that she could work on meat packer and OPA cases, and while in Chicago, between February 15, 1951, and November 5, 1951, had access to and examined defendant's invoices and payment vouchers which were stored in the Quartermaster Building in Chicago. These documents reflected the prices paid to defendant for pork sold to the Government for the fiscal year 1943. During the same period she cross-checked records of the Cudahy Packing Co. with defendant's vouchers, to verify ceiling prices. By examining these vouchers, she claims she verified that the over-ceiling prices defendant had allegedly charged had been paid. Her purpose in exam-

[1] 7 Fed. Register 5444.
[2] 7 Fed. Register 5087.

ining defendant's vouchers was to ascertain whether the alleged unlawful prices listed in the contracts later examined in Washington had in fact been paid. Before termination of her employment, she had examined every payment voucher of defendant in the files, and had checked the payment vouchers relatable to the contracts listed in the amended complaint.

Her services were terminated on November 5, 1951, and on August 27, 1954, she instituted the present action. After filing suit, she called at the Department of Justice, where approximately 33 of defendant's pork contracts executed during the period involved in this suit were made available to her. The contracts on which she bases her suit were obtained from the Department of Justice after her complaint was filed, and the computations of the alleged overcharges were made after the filing of her original complaint but prior to filing the amended complaint pursuant to order of this court to identify and list separately each transaction involved. She previously had examined abstracts of bids and reports of awards of these contracts made available to her while a government employee, and had seen copies of the contracts attached to payment vouchers in Chicago, where she examined them in detail. On several occasions before the termination of her employment, she brought to the attention of her superiors and other government officials the alleged over-ceiling prices charged by defendant.

The specific section under which relator brings this action is 31 U.S.C. 232. In subparagraph C thereof it is provided that

> the Court shall have no jurisdiction to proceed with any such suit : . . whenever it shall be made to appear that such suit was based upon *evidence* or *information* in the possession of the United States or any agency, officer or employee thereof at the time such suit was brought. (Italics supplied)

The first point raised by defendant in its motion is a challenge to the court's jurisdiction under this provision. It asserts that all the evidence or information on which this suit is based was in the possession of the United States at the time the suit was brought, and still is in its possession, and therefore the court has no jurisdiction to proceed. Its position is that the contracts of purchase and sale, invoices, vouchers, OPA regulations, files, etc., are the basis, and only basis, for the suit, and relator's deposition makes it undeniable that they were in the possession of the United States. Relator makes no argument to the contrary, except her claim in her Memorandum of Points and Authorities that the "thrust" of her case is the failure of defendant to file procedural 6 applications, above referred to, for approval. Of course the negative fact that defendant did not file such applications was as much in the possession of the United States before she informed them as it was afterward, and I am unable to follow her argument that the notification of failure to file such applications can be the basis for supplying information of the existence of OPA violations and subsequent false claims. The contracts, invoices, vouchers, etc., would disclose on their face whether over-ceiling charges had been made and false claims submitted, when compared with the applicable maximum price regulations, and the United States would have been in position to proceed against defendant, without more, subject to the defense of procedural 6 applications. If filed, these would have absolved defendant from the wrongdoing charged, and if not filed, would have left defendant without this defense. It is therefore apparent that the "evidence or information" on which her suit is based was in the possession of the United States, if the language of the statute be literally read.

However, if the language be not literally read and be construed to exclude instances where, although the evidence or information was latently in the possession of the United States, it had to be pointed out or analyzed to make it of value to the United States, as contended by relator, this court would still have no jurisdiction because relator did on occasions during her employment by the United States bring her claim of over-ceiling prices charged against defendant to the attention of her superiors. This was sufficient to point out the wrongdoing and make the evidence or information already in its possession of value to the United States, and was sufficient, if true, to justify legal proceedings by the United States, prior to which it presumably would make certain that no procedural 6 applications were available in defense. Consequently the evidence or information was no longer latent, by reason of relator's own acts prior to termination of her employment.

I am therefore of the opinion that this court is without "jurisdiction to proceed" because it has been made to appear that this suit was based upon "evidence or information in possession of the United States" at the time the suit was brought.

In addition, the statute on which relator relies for authority to bring her action has for its purpose, among others, the exclusion from its coverage of this type of claim, sometimes described as parasitical. This is demonstrated by its legislative history, as follows: In United States ex rel Marcus v. Hayes, 317 U.S. 537, decided January 18, 1943, the court held that under the statute, as it then existed, a person who allegedly contributed nothing to the discovery of the fraud, could nevertheless bring an action thereunder. Mr. Justice Jackson, being concerned over the implications of the opinion, dissented, and in his dissent had this to say:

> To accept the view of 1863 to mean that today law enforcement officials could use information gleaned in their investigations to sue as informers for their

own profit, would make the law a downright vicious and corrupting one. Fortunately no one in the Executive Department has ever suspected that such an interpretation as the court now indulges could be placed upon this statute. If we were to add motives of personal avarice to other prompters of official zeal, the time might come when the scandals of law enforcement would exceed the scandals of its violation.

Because of this decision, and apparently responding to the views of Mr. Justice Jackson and also becoming aware of the abuses which had arisen under this statute as it then existed,[3] Congress, after extensive hearings, almost completely rewrote it, including the present new provision above quoted. In this connection, Congressman Hancock, one of the Managers on the part of the House, of the revised bill stated during the debate as follows:

The temptation and the opportunity is tremendous under the present law for renegotiators, contracting officers of the various purchasing agencies of the government, and agents for collectors of internal revenue to take advantage of the information they discovered in the course of the business to enrich themselves by instigating informer's suits. That is a temptation we wish to remove. 89 Cong. Record 10849

Congressman Walter, also a Manager, made the following statement:

We feel that by enacting this compromise legislation . . . there will not be this ever-present invitation . . . for dishonest and unscrupulous investigators to turn over information to their friends or co-conspirators for the purpose of bringing suit against our citizens on information that either comes to them by reading an indictment or a bill of complaint or through testimony before some committee on which *comes to them in their official capacity as a representative of the United States.* 89 Cong. Record 10846 (Emphasis supplied)

It would thus appear that the present statute was intended to prevent a former government employee from bringing an action of this sort, where the information upon which the suit is founded was obtained by reason of his government employment. I therefore conclude on this basis also that relator may not maintain her action.

Furthermore, plaintiff's claim is barred by the statute of limitations. This statute is six years (31 U.S.C. 235). However, on August 24, 1942, Congress passed a Wartime Suspension of Limitations Act (18 U.S.C. 590(a) 1940 Ed., 56 Stat. 747) which provides that

The running of any existing statute of limitations applicable to *offenses* involving the defrauding or attempts to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner, and *now indictable* under any existing statutes, shall be suspended until June 30, 1945, or until such earlier time as the Congress, by concurrent resolution, or the President, may designate. (Italics supplied).

It will be noted that this statute relates to indictable offenses, and was not applicable to civil actions. The statute of limitations under the False Claims Act was therefore not suspended by the Wartime Suspension of Limitations Act, but in 1944 Congress in the Contract Settlement Act (18 U.S.C. 3287, 58 Stat. 649, 667, enacted July 1, 1944) amended the language of the Suspension of Limitations Act by deleting the term "now indictable." This brought the False Claims Act within its purview, but it was not effective until July 21, 1944. The statute of limitations in this case, therefore, ran until July 21, 1944, and the time between the acts complained of and July 21, 1944, must be deducted from the six-year limitation period. The last date on which defendant is alleged to have committed the acts was February 15, 1943, and one year, five months, and six days of the limitation period therefore had expired when the Contract Settlement Act of 1944 became effective. As provided in that Act, the statute of limitations commenced to run again on December 31, 1949, three years after termination of hostilities.[4] Relator's complaint was filed on August 27, 1954, which was four years, seven months, and 27 days after the Suspension of Limitations Act was no longer applicable. Adding to this period the one year, five months, and six days of limitations which had expired from February 15, 1943, to July 21, 1944, the complaint was filed six years, one month, and three days after the last date of the alleged wrongful acts. Therefore, her complaint does not come within the six-year period, and the claim is barred.

Relator seeks to overcome this bar by contending that the Suspension of Limitations Act, as originally enacted and before the amendment above referred to, applied to civil cases. This would, of course, make the amendment superfluous, and I find no support for her contention. The cases cited by her are not contrary to the position taken herein, inasmuch as they relate either to criminal cases or claims relating to periods of time made after the amendment of 1944, which concededly makes the Suspension of Limitations Act then apply to civil actions in addition to criminal proceedings. Indeed, the opinion in one of the cases cited by her, namely United States v. Kolski, 137 Fed. Supp. 359, states that it was agreed that the prior Wartime Suspension Act applied only to criminal actions and then went on to say that inclusion of civil actions was intended by the later Act. Also, in Dugan and McNamara, Inc. v. United States, 127 Fed. Supp. 801, Court of Claims, the Court came to the conclusion that the deletion of the words "now indictable" in the 1944 Act leads to the conclusion that the Suspension Act then became applicable to all actions involving fraud against the United States, whether the Government seeks redress by criminal or civil means.

[3] United States v. Rippetoe, 178 F. (2d) 735, 4th Circuit.

[4] The period of suspension of limitations provided by this section terminated three years after the termination of hostilities of World War II, which was proclaimed at 12 o'clock noon of December 31, 1946, by Proc. No. 2714, 12 F. R. 1.

Finally, I should add that the complaint involves 15 contracts, but at the argument it was conceded that in respect of nine of them, the defense of res judicata is available by virtue of the decision of the Court of Claims in the case of Armour & Company v. United States, 102 Fed. Supp. 987 (1952), the so-called Icing Charges Case, above referred to.

There being no genuine issue of material fact in respect of the points above discussed, the court has no jurisdiction to proceed with the action, and the relator is barred from maintaining it for the reasons set forth. Accordingly, defendant's motion for summary judgment will be granted, and relator's motion for the same relief will be denied.

Counsel will submit appropriate order.

The Municipal Court of Appeals for the District of Columbia

MILTON E. CANTER, LOUIS UROW, AND EDYTHE G. UROW, APPELLANTS,

v.

GRACE G. PURSE, APPELLEE.

INJUNCTION; EASEMENTS; LAND LOCATED IN MARYLAND

1. A suit asking for injunctive relief from interference with an alleged easement over land located in Charles County, Maryland, is litigation that is local in character, is solely within the jurisdiction of the courts of Maryland where the respective properties are located, and cannot be adjudicated by any court of the District of Columbia. In Maryland it has been held that in a situation of this kind a permanent injunction will lie only if complainant's title is clear. A District of Columbia court cannot, in such a situation, operate as a source of title to property in Maryland. Our courts have no inherent power, by the mere force of a decree, to establish an extra-territorial title.
2. An easement is an interest in land which has peculiar characteristics of its own, though it is not an estate or lien, an encumbrance or an equity in the ordinary sense of those terms. In Maryland it has been held that an easement is ". . . a dominant estate imposed upon a servient tenement."
3. Where plaintiffs' claim to equitable relief regarding real estate beyond the jurisdiction of the court is not based on any claim of fraud, nor is it the subject of a trust or contract, but depends directly on their alleged right to an easement by prescription, under the better-considered decisions courts will not grant relief. A court not having jurisdiction of the res cannot affect it by its decree and may only enforce personal obligations.

No. 1860. Decided November 13, 1956.

Before HOOD and QUINN, Associate Judges; and CAYTON (Chief Judge, Retired) sitting by designation under Code, Sec. 11-776(b).

APPEAL from The Municipal Court for the District of Columbia, Civil Division. Affirmed.

LOUIS UROW for the appellants. MILTON E. CANTER also entered an appearance for the appellants.

ARTHUR J. HILLAND, with whom THOMAS N. KINDNESS was on the brief, for the appellee.

CAYTON, Acting Judge: This is an appeal from an order dismissing an injunction suit for want of jurisdiction. The case was decided in the trial court on the basis of a sworn complaint and a sworn answer, together with certain affidavits submitted by the parties. The complaint recited that plaintiffs owned a tract of land in Charles County, Maryland; that defendant claimed to be the owner of an abutting tract of land fronting on a state highway; that defendant's tract was traversed by an unimproved dirt road running from plaintiffs' tract of land to the state highway; that said road provided the only access to plaintiffs' property; and that plaintiffs and their predecessors in title had acquired in said road an easement or right-of-way by prescription, based on open, continuous, notorious and adverse use. The complaint further alleged that plaintiffs had cut timber on their land where it was piled up in substantial quantities awaiting transportation to mills but that defendant and her agents were obstructing the road and had refused to permit plaintiffs to use it. Plaintiffs sought and obtained a temporary ten-day restraining order against such interference and also asked for preliminary and permanent injunctive relief.

Defendant in her answer admitted that she was the owner of the land in question and that her land fronted on the state highway. She denied that the dirt road referred to by plaintiffs provided the only access to plaintiffs' tract and asserted that the road actually traversed a different tract of land owned and occupied by another person who was not a party to the suit. Defendant's answer further recited that plaintiffs had sought permission to haul timber across her land; that she had refused such permission; and that plaintiffs had nevertheless committed a series of trespasses over her land by hauling timber across it and had removed "No Trespassing" signs she had erected on her property. In addition to matters of general denial, defendant included in her answer the defense that the court was without jurisdiction of the subject matter.

The case was heard on plaintiffs' motion for a preliminary injunction and on defendant's motion to dismiss. In a carefully prepared opinion the trial court held that it was without jurisdiction, based generally on the five following propositions: (1) a permanent injunction would be tantamount to finding that plaintiffs had acquired an easement over the land of the defendant; (2) an easement is an interest in land and, therefore, an incident of title to land; (3) the Municipal Court is without jurisdiction where title to real property located in the District of Columbia is directly and necessarily at issue; (4) a fortiori it lacks jurisdiction to try an issue of title to land located without the District; and (5) that this was a local action and could only be brought within the state in which the land lies.

[PUBLIC LAW 213—78TH CONGRESS]
[CHAPTER 377—1ST SESSION]
[H. R. 1203]

AN ACT

To limit private suits for penalties and damages arising out of frauds against the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3491 of the Revised Statutes (U. S. C., title 31, sec. 232) be, and it hereby is, amended to read as follows:

"SEC. 3491 (A). The several district courts of the United States, the District Court of the United States for the District of Columbia, the several district courts of the Territories of the United States, within whose jurisdictional limits the person doing or committing such act shall be found, shall wheresoever such act may have been done or committed, have full power and jurisdiction to hear, try, and determine such suit.

"(B) Except as hereinafter provided, such suit may be brought and carried on by any person, as well for himself as for the United States, the same shall be at the sole cost and charge of such person, and shall be in the name of the United States, but shall not be withdrawn or discontinued without the consent, in writing, of the judge of the court and the district attorney, first filed in the case, setting forth their reasons for such consent.

"(C) Whenever any such suit shall be brought by any person under clause (B) notice of the pendency of such suit shall be given to the United States by serving upon the United States attorney for the district in which such suit shall have been brought a copy of the bill of complaint and by sending, by registered mail, to the Attorney General of the United States at Washington, District of Columbia, a copy of such bill together with a disclosure in writing of substantially all evidence and information in his possession material to the effective prosecution of such suit. The United States shall have sixty days, after service as above provided, within which to enter appearance in such suit. If the United States shall fail, or decline in writing to the court, during said period of sixty days to enter any such suit, such person may carry on such suit. If the United States within said period shall enter appearance in such suit the same shall be carried on solely by the United States. In carrying on such suit the United States shall not be bound by any action taken by the person who brought it, and may proceed in all respects as if it were instituting the suit: *Provided*, That if the United States shall fail to carry on such suit with due diligence within a period of six months from the date of its appearance therein, or within such additional time as the court after notice may allow, such suit may be carried on by the person bringing the same in accordance with clause (B) above. The court shall have no jurisdiction to proceed with any such suit brought under clause (B) or pending suit brought under section 3491

of the Revised Statutes whenever it shall be made to appear that such suit was based upon evidence or information in the possession of the United States, or any agency, officer or employee thereof, at the time such suit was brought: *Provided, however*, That no abatement shall be had as to a suit pending at the effective date of this Act if before such suit was filed such person had in his possession and voluntarily disclosed to the Attorney General substantial evidence and information which was not theretofore in the possession of the Department of Justice.

"(D) In any suit whether or not on appeal pending at the effective date of this Act brought under Revised Statutes, section 3491, the court in which such suit is pending shall stay all further proceedings, and shall forthwith cause written notice, by registered mail, to be given the Attorney General that such suit is pending, and the Attorney General shall have sixty days from the date of such notice to appear and carry on such suit in accordance with clause (C).

"(E) (1) In any such suit, if carried on by the United States as herein provided, the court may award to the person who brought such suit, out of the proceeds of such suit or any settlement of any claim involved therein, which shall be collected, an amount which in the judgment of the court is fair and reasonable compensation to such person for disclosure of the information or evidence not in the possession of the United States when such suit was brought. Any such award shall in no event exceed one-tenth of the proceeds of such suit or any settlement thereof.

"(2) In any such suit when not carried on by the United States as herein provided, whether heretofore or hereafter brought, the court may award to the person who brought such suit and prosecuted it to final judgment, or to settlement, as provided in clause (B), out of the proceeds of such suit or any settlement of any claim involved therein, which shall be collected, an amount, not in excess of one-fourth of the proceeds of such suit or any settlement thereof, which in the judgment of the court is fair and reasonable compensation to such person for the collection of any forfeiture and damages; and such person shall be entitled to receive to his own use such reasonable expenses as the court shall find to have been necessarily incurred and all costs the court may award against the defendant, to be allowed and taxed according to any provision of law or rule of court in force, or that shall be in force in suits between private parties in said court: *Provided*, That such person shall be liable for all costs incurred by himself in such case and shall have no claim therefor on the United States."

SEC. 2. Section 3493 of the Revised Statutes (U. S. C., title 31, sec. 234) is hereby repealed.

Approved December 23, 1943.

(2) The item specifically priced in paragraphs (a) and (b) of this section which was considered as the most nearly comparable.

(3) The weighted average f. o. b. mill prices received by the seller or by his most nearly competitive seller for each of these items during the period January 1 to August 1, 1941.

The Office of Price Administration shall adjust or approve the price so submitted and shall publish the approved maximum price in the FEDERAL REGISTER as an order under this Maximum Price Regulation No. 19. The price so approved and published shall thereafter be the maximum price for such item for that seller. After such tentative price has been submitted to the Office of Price Administration for approval, the seller may quote and deliver at that price, but the seller may not accept payment and the buyer may not make payment until such publication in the FEDERAL REGISTER.

(g) For grades and classes of lumber recognized by the Southern Pine Association Gulf Coast Classification and not specifically priced in this section, dated March 15, 1923, the seller shall determine a tentative price by taking the price of the most nearly comparable grade or item specifically priced in paragraphs (a) and (b) of this section, and applying thereto the average differential between the two items maintained by the seller during the period January 1 to August 1, 1941. If the seller had no established differential during that period, he shall apply the average differential maintained by his most closely competitive seller during that period. If neither the seller nor a competitive seller had such a differential, the seller shall apply a differential based on comparative grade value.

The tentative price so determined shall be submitted for approval to the Lumber Branch of the Office of Price Administration in Washington, D. C. together with a statement as to the manner of determining the price which shall include the following facts:

(1) The paragraph number of the Southern Pine Association Gulf Coast Classification which states the specifications of the item to be priced.

(2) The item specifically priced in paragraphs (a) and (b) of this section which was considered as the most nearly comparable.

(3) The weighted average f. o. b. mill prices received by the seller or by his most nearly competitive seller for each of these items during the period January 1 to August 1, 1941.

The Office of Price Administration shall adjust or approve the price so submitted and shall notify the seller in writing the approved maximum price for such item which price shall thereafter be the maximum price for such item for that seller. After such tentative price has been submitted to the Office of Price Administration for approval, the seller may quote and deliver at that price, but the seller may not accept payment and the buyer may not make payment until such instructions have been received. *Provided*, That the seller may apply to the Office of Price Administration in Washington, D. C. for instructions as to additions for workings, specifications, services, or other extras not provided for. In such application the seller shall describe in detail the workings, specifications, services or other extras not provided for. Pending receipt of such instructions the seller may quote and deliver at a price which is agreed by the parties to be subject to adjustment to the price determined by the Office of Price Administration, but the seller may not accept payment and the purchaser may not make payment until such instructions have been received.

(i) Where moisture content requirements are waived by the purchaser, the maximum price shall be the price herein established for green lumber. In such a sale the seller may not use the estimated weight for green lumber in computing transportation costs, but must use either the actual weight of the lumber or the permitted estimated weights for dry lumber.

(j) The maximum prices herein established shall not be increased by any charges for the extension of credit, and shall be decreased for prompt payment to the same extent that the sale price would have been decreased by the seller on August 1, 1941. The cash and credit periods recognized by the seller on August 1, 1941, shall not be reduced.

(k) All invoices of lumber must show the size, grade, condition of seasoning, working, and other specifications of the lumber, and whether it is Shortleaf Yellow pine or Longleaf Yellow pine lumber and, in the case of a sale on a delivered basis, the information required by § 1381.212 (d).

(l) No person shall pay, and no person shall charge or receive a commission for purchasing Southern pine lumber which is based on the amount or value of lumber purchased, if the amount of the commission plus the purchase price is higher than the maximum price permitted by this Maximum Price Regulation No. 19.

(m) The maximum price for sales on combination grades shall be the maximum price in this section established for the lowest grade named in the combination.

(n) A gross price above the maximum price herein established shall not be quoted, even if accompanied by a discount the effect of which is to bring the net price below such maximum price.

Issued this 14th day of July 1942.

LEON HENDERSON,
Administrator.

[F R Doc. 42-6693; Filed, July 14, 1942; 11:53 a. m.]

PART 1305—ADMINISTRATION

[Supplementary Order 9]

COMMODITIES OR SERVICES UNDER GOVERNMENT CONTRACTS OR SUBCONTRACTS

APPLICATIONS FOR ADJUSTMENT OF MAXIMUM PRICES

In the statement of considerations accompanying Maximum Price Regulation No. 188 issued simultaneously herewith, the Administrator has stated his reasons for the issuance of that regulation and has incorporated therein by reference the statement of considerations issued with Maximum Price Regulation No. 188 and published in the issue of the Federal Register.[1] For the reasons set forth in that statement and under the authority vested in the Price Administrator by the Emergency Price Control Act of 1942, it is hereby ordered:

§ 1305.12 *Applications for adjustment of maximum prices for commodities or services under Government contracts or subcontracts.* (a) Any person who has entered into or proposes to enter into a contract with the United States or any agency thereof, or with the Government of any country whose defense the President deems vital to the defense of the United States under the terms of the Act of March 11, 1941, entitled "An Act to promote the defense of the United States," or any agency of any such Government, or a subcontract under any such contract, who believes that a maximum price established by any price regulation of the Office of Price Administration impedes or threatens to impede production of a commodity, or supply of a service, which is essential to the war program and which is or will be the subject of such contract or subcontract, may file an application for adjustment of such maximum price in accordance with Procedural Regulation No. 6.[2] Upon the filing of an application for adjustment and pending the issuance of an order granting or denying such application, contracts or subcontracts may be entered into, or offered to be entered into, and deliveries may be made, at the price requested in such application. If, however, the order issued denies the application in whole or in part, the contract price shall be revised downward to the maximum price ordered, and if any payment has been made at the requested price, the applicant may be required to refund the excess.

(b) "Price Regulation," as used in this Supplementary Order, means a price schedule effective in accordance with the provisions of section 206 of the Emergency Price Control Act of 1942, a maximum price regulation or temporary maximum price regulation heretofore or hereafter issued by the Office of Price Administration, or any amendment or supplement thereto or order heretofore or hereafter issued thereunder.

(c) *Effective date.* (1) This Supplementary Order No. 9 (§ 1305.12) shall become effective July 16, 1942.

(Pub. Law 421, 77th Cong.)

Issued this 14th day of July 1942.

LEON HENDERSON,
Administrator.

[F. R. Doc. 42-6694; Filed, July 14, 1942; 11:59 a. m.]

PART 1499—COMMODITIES AND SERVICES

[Order 30]

[Maximum Prices Authorized Under § 1499.3 (b) of the General Maximum Price Regulation.]

CHRYSLER AIRTEMP SALES CORPORATION

Chrysler Airtemp Sales Corporation, Dayton, Ohio, has made application pur-

APPENDIX C

(2) The item specifically priced in paragraphs (a) and (b) of this section which was considered as the most nearly comparable.

established differential during that period, he shall apply the average differential maintained by his most closely competitive seller during that period. If neither the seller nor a competitive seller had such a differential, the seller shall apply a differential based on comparative grade value.

The tentative price so determined shall be submitted for approval to the Lumber Branch of the Office of Price Administration in Washington, D. C. together with a statement as to the manner of determining the price which shall include the following facts:

(1) The paragraph number of the Southern Pine Association Gulf Coast Classification which states the specifications of the item to be priced.

(2) The item specifically priced in paragraphs (a) and (b) of this section which was considered as the most nearly comparable.

(3) The weighted average f. o. b. mill prices received by the seller or by his most nearly competitive seller for each of these items during the period January 1 to August 1, 1941.

The Office of Price Administration shall adjust or approve the price so submitted and shall notify the seller in writing the approved maximum price for such item which price shall thereafter be the maximum price for such item for that seller. After such tentative price has been submitted to the Office of Price Administration for approval, the seller may quote and deliver at that price, but the seller may not accept payment and the buyer may not make payment until such written notice has been received by the seller.

(h) No additions may be made for workings, specification, services, or other extras not expressly provided for herein: *Provided*, That the seller may apply to the Office of Price Administration in Washington, D. C. for instructions as to additions for workings, specifications, the size, grade, condition of seasoning, working, and other specifications of the lumber, and whether it is Shortleaf Yellow pine or Longleaf Yellow pine lumber and, in the case of a sale on a delivered basis, the information required by § 1381.212 (d).

(i) No person shall pay, and no person shall charge or receive a commission for purchasing Southern pine lumber which is based on the amount or value of lumber purchased, if the amount of the commission plus the purchase price is higher than the maximum price permitted by this Maximum Price Regulation No. 19.

(m) The maximum price for sales on combination grades shall be the maximum price in this section established for the lowest grade named in the combination.

(n) A gross price above the maximum price herein established shall not be quoted, even if accompanied by a discount the effect of which is to bring the net price below such maximum price.

Issued this 14th day of July 1942.

LEON HENDERSON,
Administrator.

[F. R. Doc. 42-6693; Filed, July 14, 1942; 11:53 a. m.]

PART 1305—ADMINISTRATION

[Supplementary Order 9]

COMMODITIES OR SERVICES UNDER GOVERNMENT CONTRACTS OR SUBCONTRACTS

APPLICATIONS FOR ADJUSTMENT OF MAXIMUM PRICES

A statement of the considerations involved in the issuance of this Supplementary Order, issued simultaneously herewith, has been filed with the Division of the Federal Register.[1] For the reasons set forth in that statement and under the authority vested in the Price Administrator by the Emergency Price Control quested in such application. If, however, the order issued denies the application in whole or in part, the contract price shall be revised downward to the maximum price ordered, and if any payment has been made at the requested price, the applicant may be required to refund the excess.

(b) "Price Regulation," as used in this Supplementary Order, means a price schedule effective in accordance with the provisions of section 206 of the Emergency Price Control Act of 1942, a maximum price regulation or temporary maximum price regulation heretofore or hereafter issued by the Office of Price Administration, or any amendment or supplement thereto or order heretofore or hereafter issued thereunder.

(c) *Effective date.* (1) This Supplementary Order No. 9 (§ 1305.12) shall become effective July 16, 1942.

(Pub. Law 421, 77th Cong.)

Issued this 14th day of July 1942.

LEON HENDERSON,
Administrator.

[F. R. Doc. 42-6694; Filed, July 14, 1942; 11:59 a. m.]

PART 1499—COMMODITIES AND SERVICES

[Order 30]

[Maximum Prices Authorized Under § 1499.3 (b) of the General Maximum Price Regulation[2]]

CHRYSLER AIRTEMP SALES CORPORATION

Chrysler Airtemp Sales Corporation, Dayton, Ohio, has made application pursuant to § 1499.3 (b) of The General

[1] Copies may be obtained from the Office of Price Administration.

[2] 7 F.R. 5087.

[3] 7 F.R. 3153, 3330, 3666, 3990, 3991, 4339, 4487, 4659.

APPENDIX C-2

or who, in connection with this order, wilfully conceals a material fact or furnishes false information to any department or agency of the United States is guilty of a crime, and upon conviction may be punished by fine or imprisonment. In addition, any such person may be prohibited from making or obtaining further deliveries of, or from processing or using, material under priority control and may be deprived of Priorities assistance. (P.D. Reg. 1, as amended, 6 F.R. 6680; W.P.B. Reg. 1, 7 F.R. 561; E.O. 9024, 7 F.R. 329; E.O. 9040, 7 F.R. 527; E.O. 9125, 7 F.R. 2719; sec. 2(a), Pub. Law 671, 76th Cong., as amended by Pub. Laws 89 and 507, 77th Cong.)

Issued this 3d day of July 1942.

J. S. KNOWLSON,
Director of Industry Operations.

[F. R. Doc. 42-6313; Filed, July 3, 1942; 11:17 a. m.]

Chapter XI—Office of Price Administration

PART 1300—PROCEDURE

[Procedural Regulation 6]

PROCEDURE FOR THE ADJUSTMENT OF MAXIMUM PRICES FOR COMMODITIES OR SERVICES UNDER GOVERNMENT CONTRACTS OR SUBCONTRACTS

Pursuant to the authority of sections 201 (d) and 203 (a) of the Emergency Price Control Act of 1942 (Public, No. 421, 77th Cong., 2d Sess., Jan. 30, 1942), the following rules are hereby prescribed for the adjustment of maximum prices established by the Office of Price Administration for commodities or services which are essential to the war program and which are or will be the subject of Government contracts or subcontracts:

§ 1300.401 *Right to apply for adjustment.* Any person who has entered into or proposes to enter into a Government contract or a subcontract under any such contract, who believes that an established maximum price impedes or threatens to impede production of a commodity or supply of a service which is essential to the war program and which is or will be the subject of such contract or subcontract may apply for adjustment of that maximum price in the manner set forth below.

Any Government agency may appear as an interested party in the case of any such application.

After an application has been filed and pending the issuance of an order granting or denying the application, the applicant may enter into or offer to enter into contracts and may make deliveries at the price requested in the application. If the order issued denies the application in whole or in part, the contract price shall be revised downward to the maximum price ordered, and if any payment has been made at the requested price, the applicant may be required to refund the excess. If a request for review is filed by

the Administrator, may enter into or offer to enter into contracts and may make deliveries at the price requested in the application. If the order issued by the Administrator denies the application in whole or in part, the contract price shall be revised downward to the maximum price ordered, and if any payment has been made at the requested price, the applicant may be required to refund the excess.

§ 1300.402 *Form of application.* An application for adjustment shall be made on Form OPA–6PR–1 set out in Appendix A, incorporated as § 1300.412 of this Procedural Regulation No. 6, and a separate form shall be filed for each commodity or service. Such forms may be obtained from any field office of the Office of Price Administration or may be copied by the applicant from Appendix A.

§ 1300.403 *Application must be verified.* An application for adjustment shall be signed by the applicant and shall contain a statement, signed and sworn to by the applicant, that the statements made in the application are known by him to be true and correct.

§1300.404 *Place for filing application and number of copies.* An original and two copies of an application for adjustment may be filed either with the appropriate Regional Office of the Office of Price Administration, or with the Office of Price Administration, Washington, D. C. Any application made with respect to a contract entered into or proposed to be entered into (a) with the Department of the Navy, the total value of which exceeds $200,000, (b) with the War Department, the total value of which exceeds $5,000,000, (c) with any agency of the United States other than the War Department or the Department of the Navy, or (d) with the Government of any country whose defense the President deems vital to the defense of the United States under the terms of the Act of March 11, 1941, entitled "An Act to promote the defense of the United States" or with any agency of any such Government, shall be filed with the Office of Price Administration, Washington, D. C. Any application filed in Washington, D. C., may be transmitted by the Office of Price Administration to the appropriate Regional Office for action by that Office. A list of the Regional Offices with an enumeration of the states included in each region is set forth in Appendix B, incorporated as § 1300.413 of this Procedural Regulation No. 6.

§ 1300.405 *Action by regional offices.* After due consideration, the Regional Office may, by order, grant, in whole or in part, or deny any application for adjustment which is properly pending before it. The decision of the Regional Office shall be accompanied by a statement of the reasons for its action. In cases of unusual difficulty or importance, the Regional Office shall refer the application for decision to the Administrator in Washington, D. C.

§ 1300.406 *Review by administrator.*

part by the Regional Office may, within fifteen days after the date on which such order of denial was mailed to him, file with the Regional Office a request for review by the Administrator of the order of denial. Requests for review shall be filed on Form OPA–6PR–2, set out in Appendix C, incorporated as section 1300.414 of this Procedural Regulation No. 6. Such form may be obtained from any field office of the Office of Price Administration or may be copied by the applicant from Appendix C.

§ 1300.407 Action by administrator. After due consideration, the Administrator may, by order, grant, in whole or in part, or deny any application for adjustment which

(a) is properly before the Administrator on request for review of action by a Regional Office;

(b) is filed with the Office of Price Administration, Washington, D. C., and not transmitted to a Regional Office for action, or

(c) is filed with the appropriate Regional Office but is referred for decision to the Administrator by that Office. The decision of the Administrator shall be accompanied by a statement of the reasons for his action.

§ 1300.408 *Protest of denial of application.* Any applicant whose application for adjustment is denied in whole or in part by the Administrator may, within sixty days after the issuance of the Administrator's order finally denying such application, file a protest against such order in accordance with the provisions of Procedural Regulation No. 1 (7 F.R. 971).

§ 1300.409 *Amendment of this regulation.* Any provision of this Procedural Regulation No. 6 may be amended or rescinded by the Administrator at any time. Such amendment or rescission shall be published in the FEDERAL REGISTER and shall take effect from the date of its publication, unless otherwise specified therein.

§ 1300.410 *Definitions.* As used in this Procedural Regulation No. 6, the terms:

(a) "Administrator" means the Price Administrator of the Office of Price Administration, Washington, D. C., or such person as he may appoint or designate to carry out any of his duties.

(b) "Government contract" means any contract with the United States or any agency thereof or with the Government of any country whose defense the President deems vital to the defense of the United States under the terms of the Act of March 11, 1941, entitled "An Act to promote the defense of the United States" or with any agency of any such Government.

(c) "Appropriate Regional Office" means:

(1) If the application for adjustment is made with respect to a contract entered into or proposed to be entered into with the War Department or the Department

or who, in connection with this order, wilfully conceals a material fact or furnishes false information to any department or agency of the United States is guilty of a crime, and upon conviction may be punished by fine or imprisonment. In addition, any person who

price requested in the application. If the order issued denies the application in whole or in part, the contract price shall be revised downward to the maximum price ordered, and if any payment has been made at the requested price, the applicant may be required to refund the excess. If a request for review is filed by the applicant in accordance with § 1300.406 of this Procedural Regulation No. 6, the applicant, pending action by

the Administrator, may enter into or offer to enter into contracts and may make deliveries at the price requested in the application. If the order issued by the Administrator denies the application in whole or in part, the contract price shall be revised downward to the

Office shall be accompanied by a statement of the reasons for its action. In cases of unusual difficulty or importance, the Regional Office shall refer the application for decision to the Administrator in Washington, D. C.

§ 1300.406 *Review by administrator.* Any applicant whose application for adjustment has been denied in whole or in part by the Regional Office may, within fifteen days after the date on which such order of denial was mailed to him, file with the Regional Office a request for review by the Administrator of the order of denial. Requests for review shall be

States" or with any agency of any such Government.

(c) "Appropriate Regional Office" means:

(1) If the application for adjustment is made with respect to a contract entered into or proposed to be entered into with the War Department or the Department of the Navy, the Regional Office of the Office of Price Administration for the

region in which is located the field purchasing office or depot of the War Department, or the naval purchasing office with which the applicant is negotiating or expects to negotiate.

(2) If the application for adjustment is made with respect to a subcontract under a Government contract, the Regional Office of the Office of Price Administration (i) for the region in which is located the plant of the applicant in which the commodity involved is or will be produced or in which the service involved is or will be supplied or (ii) if such plants are located in more than one region, for any region in which any such plant is located.

(d) "Person" includes an individual, corporation, partnership, association, or any other organized group of persons, or legal successor or representative of any of the foregoing, and includes the United States or any agency thereof, or any other government, or any of its political subdivisions, or any agency of any of the foregoing.

(e) "FEDERAL REGISTER" means the publication provided for by the Act of July 26, 1935 (49 Stat. 500), as amended.

§ 1300.411 *Effective date.* This Procedural Regulation shall become effective July 3, 1942.

Issued this 1st day of July 1942.

LEON HENDERSON,
Administrator.

§ 1300.412 *Appendix A: Form OPA–6 PR–1.*

UNITED STATES OF AMERICA

OFFICE OF PRICE ADMINISTRATION

Form OPA–6 PR–1

Application for Adjustment of Maximum Prices for Commodities or Services Under Government Contracts or Subcontracts

NOTES: (1) Unless otherwise indicated, "commodity" refers to a particular size and specification and the applicant shall submit separate forms for commodities of varying specifications.

(2) A separate form should be filed for each commodity or service. If application is made with respect to a commodity or service, which is or will be subject to several contracts, submit, on extra sheets, answers to questions I–2a, I–2b, and I–2c for each contract.

(3) The term "contract" includes purchase orders, letters of intent, or other arrangements not yet completed.

(4) One original and two copies of the form, and of all supplementary statements, must be filed.

_____ hereby
(Applicant)

makes application to the Office of Price Administration, pursuant to Procedural Regulation No. 6, for adjustment of the maximum price established for the particular commodity or service described below, which is or will be the subject of Government contracts or subcontracts.

The following facts are furnished to the OPA in support of this application:

Name of company_____

Address_____

2 (a) Serial number or other identification of contract, giving name and address of purchaser or prospective purchaser:

(1) Identification of contract_____

(2) Name of purchaser_____

(3) Address of purchaser_____

_____
(Street) (City) (State)

(b) If price adjustment is sought with respect to deliveries under existing contracts, submit:

1. Date of contract_____
2. Estimated date of completion_____
3. Total quantity of commodity or service contracted for_____
4. Total quantity of commodity or service remaining to be delivered or supplied_____

(c) If price adjustment is sought for a proposed contract, submit:

1. Final delivery date to be stipulated by proposed contract_____
2. Estimated date at which deliveries will begin_____
3. Total quantity of commodity or service to be contracted for_____
4. Value of contract (proposed unit price times quantity)_____

(d) If contract is a subcontract, submit serial number or other identification of prime contract, whether or not there are intermediate subcontracts_____

3. Established maximum price per unit, pursuant to Maximum Price Regulation No. —_____
(indicate unit)
4. Requested unit price_____
5. Give names and addresses of the plants of the applicant in which the commodity or service is being or will be produced or supplied_____

_____

_____

II. *Importance of Commodity or Service in Company's Operations:*

Sales of particular commodity or service involved		Total company sales
Units	Dollars	Dollars

1. Actual sales for 1941_____
2. Actual sales Jan. 1, 1942, to_____1942.
(present date)
3. Estimated sales Jan. 1, 1942 to Dec. 31, 1942, assuming price adjustment requested is granted for the particular commodity or service involved.

III. *Unit Costs of Commodity or Service: General.* Explain on a separate sheet (in triplicate) attached to this form, the items included in Lines 3 and 4 of Columns I and II and the basis of allocation of such items of cost to the commodity or service involved. *Under no circumstances are Income and Excess Profits Taxes to be included as costs.*

Column I. (a) In this column give actual cost data if available. Actual cost data for the most recent quarter will be acceptable. If no actual cost data are available, give estimates as to current costs. *Indicate, however, by encircling the appropriate figures where estimates are being employed.* Both use the same method in which your books are kept.

(c) *Direct Labor.* State cost of direct or production labor following the classifications in your own records; and for each classification; use actual wages of men employed on the job, or if not practicable, base cost on departmental or shop average wage rates for each classification.

(d) *Other Manufacturing Costs.* These costs should be stated in accordance with the method of allocation established in your company.

Column II. (a) In this column give estimated costs of producing the commodity or supplying the service for the remainder of 1942. These estimates should be based upon total volume of that commodity or service for the remainder of 1942, assuming price adjustment requested is granted.

(b) In submitting data for the remainder of 1942, compute cost estimates in accordance with the principles indicated in the above instructions for filling in Column I.

	I Current costs	II Estimated costs remainder of 1942
1. Direct materials		
2. Direct labor		
3. Other manufacturing costs		
4. Other expenses		
5. Total cost		
6. Number of units on which cost computation is based		
7. Period used for current costs		* * *

IV. Submit, in triplicate, a detailed explanation of the reasons for requesting price adjustment, including a detailed justification for any anticipated increased costs reported in Column II above together with a separate showing of the effect on unit costs of each such increase.

V. State whether the applicant has entered into, or will enter into, a government contract or subcontract, or will make deliveries, at the requested unit price—pursuant to Procedural Regulation No. 6—pending final action by the Office of Price Administration. Yes ( ) No ( ).

VI. Submit the following:

A. Balance Sheets as of the close of:
1. 1936 through 1941 (fiscal or calendar years).
2. Most recent accounting period.

B. Income Statements for:
1. 1936 through 1941 (fiscal or calendar years).
2. Most recent accounting period.

Instructions: (1) Income statements must show: (a) net sales (b) cost of commodities and/or services sold, stating separately, total direct labor costs, total direct material costs, and total other manufacturing costs (c) general and administrative expenses, segregating compensation to officers and directors, and (d) net profits *before* income and excess profits taxes. All charges to operations representing accumulations of reserves must be shown in detail on the statements.

(2) If this application is submitted to the National Office of OPA, the applicant need not file with the application any required financial data which were previously sub-

Form ——Annual Financial Re-

APPENDI

region in which is located the field purchasing office or depot of the War Department, or the naval purchasing office with which the applicant is negotiating or expects to negotiate.

(a) will be the subject of Government contracts or subcontracts.

The following facts are furnished to the OPA in support of this application:

Name of company _____

Address _____
(Street) (City) (State)

I. *Description of Commodity or Service and Contract on which Adjustment is Sought:*

1. Brief description of commodity or service (indicate unit of measure): _____

2 (a) Serial number or other identification of contract, giving name and address of purchaser or prospective purchaser:

(1) Identification of contract _____

(2) Name of purchaser _____

(3) Address of purchaser _____

cost data if available. Actual cost data for the most recent quarter will be acceptable. If no actual cost data are available, give estimates as to current costs. *Indicate, however, by encircling the appropriate figures where estimates are being employed.* Both actual and estimated cost data should be based upon total sales of the particular commodity or service involved and not merely upon sales under the particular contract involved.

(b) *Direct materials.* In computing cost of direct materials, use costs as shown on your books. If material cost is estimated, use the same method in which your books are kept.

(c) *Direct Labor.* State cost of direct or production labor following the classifications in your own records; and for each classification: use actual wages of men employed senting accumulations of reserves must be shown in detail on the statements.

(2) If this application is submitted to the National Office of OPA, the applicant need not file with the application any required financial data which were previously submitted on *Form A—Annual Financial Report*—or *Form B—Interim Financial Report*—issued by the Office of Price Administration.

_____
Applicant

By _____

_____
Title

APPENDIX C-3

BRIEF FOR THE RESPONDENT IN OPPOSITION

FILE COPY

Office-Supreme Court, U.S.
FILED
SEP 2 1958
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 254

UNITED STATES OF AMERICA ON THE RELATION OF MILDRED B. McCANS, AND MILDRED B. McCANS ON HER OWN BEHALF, *Petitioner*

v.

ARMOUR AND COMPANY, A CORPORATION, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

PERRY S. PATTERSON
HERBERT J. MILLER, JR.
800 World Center Building
Washington 6, D. C.
Attorneys for Respondent

Of Counsel:
GEORGE E. LEONARD, JR.
JOHN P. DOYLE
Armour and Company
Chicago, Illinois

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX

Subject Index

	Page
Questions Presented	1
Statutes Involved	2
Statement of the Case	4
Argument	7
I. Petitioner's Claim is Barred by the Statute of Limitations	7
(a) The Statute of Limitations Ruling Conflicts With No Other Decision and Has No Prospective Application	7
(b) Since Petitioner's Claim is Barred by the Statute of Limitations the Other Issues Are Moot	9
II. The Ruling on the Status of Former Government Employees Under the False Claims Act Was Not the Sole Basis of the Decision Below	9
III. Petitioner Is Barred from Basing a False Claims Action Upon Knowledge Obtained by Reason of Her Government Employment	10
Conclusion	13

TABLE OF CASES

Dugan & McNamara, Inc. v. United States, 127 F. Supp. 801 (Ct. Cl. 1955)	8
Marcus v. Hess, 317 U.S. 537	10
United States v. Kolsky, 137 F. Supp. 359 (E.D. Pa. 1955)	8

Page

STATUTES AND REGULATIONS

Contract Settlement Act of 1944, 18 U.S.C. § 3287 (1952 ed.) 2, 8
Emergency Price Control Act of 1942, 50 U.S.C., App. § 904(c) (1946 ed.) 4, 11
False Claims Act, 31 U.S.C. § 232 (1952 ed.) 2
False Claims Act Statute of Limitations, 31 U.S.C. § 235 (1952 ed.) 3, 8
War Time Suspension of Limitations Act, 18 U.S.C. § 590a (1940 ed. Supp. II) 1, 2, 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 254

UNITED STATES OF AMERICA ON THE RELATION OF MILDRED B. MCCANS, AND MILDRED B. MCCANS ON HER OWN BEHALF, *Petitioner*

v.

ARMOUR AND COMPANY, A CORPORATION, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

BRIEF FOR RESPONDENT IN OPPOSITION

QUESTIONS PRESENTED

The Petitioner does not correctly state the questions to be considered by the Court and Respondent submits that they are as follows:

1. Did the original War Time Suspension of Limitations Act, 18 U.S.C. Section 590a (1940 ed. Supp. II) which applied only to "offenses . . . now indictable . . ." suspend the six-year statute of limitations, 31 U.S.C. Section 235, applicable to this, a civil action?

2. Does 31 U.S.C., Sec. 232 (C), which provides that the District "court shall have no jurisdiction . . . whenever it shall be made to appear that such suit was based upon evidence or information in the possession of the United States, or any agency, officer or employee thereof, at the time such suit was brought" bar the informer's action herein where the information upon which her suit is founded was obtained in the course of her employment as a Quartermaster Claims Examiner and brought to the attention of her superiors, and the documentary evidence on which her case is based has at all times been in the possession of the government?

STATUTES INVOLVED

The following are the relevant portions of the statutes involved:

(a) War Time Suspension of Limitations Act, Act of August 24, 1942, c. 555, 56 Stat, 747, U.S.C., Title 18 § 590a (1940 Ed. Supp. II):

> "The running of any existing statute of limitations applicable to *offenses* involving the defrauding or attempts to defraud the United States or any agency thereof, whether by conspiracy or not, and in any manner, *and now indictable* under any existing statutes, shall be suspended until June 30, 1945, or until such earlier time as the Congress by concurrent resolution, or the President, may designate . . ." (Emphasis added)

(b) The original War Time Suspension of Limitations Act set forth in (a) above was amended by Sections 19(b) and 24(a) of the Contract Settlement Act of 1944, Act of July 1, 1944. c. 358 §§ 19(b), 24(a), 58

Stat. 649, 667, 670 (now codified as amended in U.S.C., Title 18, § 3287 (1952 ed.))

"19(b) The first section of the Act of August 24, 1942 (56 Stat. 747; title 18, U.S.C., Supp. II, sec. 590a), is amended to read as follows:

'The running of any existing statute of limitations applicable to any offense against the laws of the United States (1) involving defrauding or attempts to defraud the United States or any agency thereof whether by conspiracy or not, and in any manner, or (2) committed in connection with the negotiation, procurement, award, performance, payment for, interim financing, cancellation or other termination or settlement, of any contract, subcontract, or purchase order which is connected with or related to the prosecution of the present war, or with any disposition of termination inventory by any war contractor or Government agency, shall be suspended until three years after the termination of hostilities in the present war as proclaimed by the President or by a concurrent resolution of the two Houses of Congress. This section shall apply to acts, offenses, or transactions where the existing statute of limitations has not yet fully run, but it shall not apply to acts, affenses or transactions which are already barred by provisions of existing law.'"

* * *

"24(a) This Act shall become effective twenty days after the date of its enactment . . . [July 1, 1944]

(c) False Claims Act Statute of Limitations, R.S. 3494, U.S.C., Title 31, § 235, (1952 ed.):

"Every such suit shall be commenced within six years from the commission of the acts, and not afterward."

(d) Section 4 of the Emergency Price Control Act of 1942, Act of January 30, 1942, c. 26, 56 Stat. 28, U.S.C., Title 50 App. § 904(c) (1946 ed.):

> "(c) It shall be unlawful for any officer or employee of the Government, or for any adviser or consultant to the Administrator in his official capacity, to disclose, otherwise than in the course of official duty, any information obtained under this Act [sections 901-922, 923-946 of this Appendix] or to use any such information for personal benefit."

STATEMENT OF THE CASE

Petitioner's case is based on her allegations that Respondent charged overceiling prices for pork products sold to the Army between July 1, 1942, and February 15, 1943, in violation of OPA maximum price regulations. Her complaint was filed August 27, 1954.

Petitioner was a Claims Examiner for the U. S. Army Quartermaster Corps from 1944 to 1951. As the trial court found (146 F. Supp. at pp. 547-548, 549):

> "Her duties consisted of auditing claims evidenced by contracts, invoices, etc., made by meat packers against the United States for meat and other articles sold to the Quartermaster Corps of the Army, auditing procurement records, and verifying that the prices charged were in accord with contract provisions and ceiling established by the Office of Price Administration.
>
> * * *
>
> "She also examined during her employment the Quartermaster file containing abstracts of bids and other documents relating to defendant's pork contracts, and concluded from her examination of this file that defendant had charged overceiling prices on pork products sold to the government

during the period involved in this suit. Also during this period of employment she examined OPA records at the National Archives office to ascertain whether defendant had filed Procedural 6 applications as well as price regulations in the RFC warehouse, where OPA records in Washington were filed, and the Quartermaster procurement records in an Alexandria warehouse. On the basis of this examination, she concluded that no procedural 6 applications had been filed by defendant, covering the sales of pork to the Federal government prior to April 1943, and as early as 1949 concluded that defendant had made overceiling sales of pork products to the Quartermaster Corps in the period from July 1942 to January 1943.

"In January 1951, at her request, she was transferred to the office of the Quartermaster General in Chicago, Illinois, so that she could work on meat packer and OPA cases, and while in Chicago, between February 15, 1951, and November 5, 1951, had access to and examined defendant's invoices and payment vouchers which were stored in the Quartermaster Building in Chicago. These documents reflected the prices paid to defendant for pork sold to the government for the fiscal year 1943. During the same period she cross-checked records of the Cudahy Packing Co. with defendant's vouchers, to verify ceiling prices. By examining these vouchers, she claims she verified that the overceiling prices defendant had allegedly charged had been paid. Her purpose in examining defendant's vouchers was to ascertain whether the alleged unlawful prices listed in the contracts later examined in Washington had in fact been paid. Before termination of her employment, she had examined every payment voucher of defendant in the files, and had checked the payment vouchers relatable to the contracts listed in the amended complaint.

"Her services were terminated on November 5, 1951, and on August 27, 1954, she instituted the present action. After filing suit, she called at the Department of Justice, where approximately 33 of defendant's pork contracts executed during the period involved in this suit were made available to her. The contracts on which she bases her suit were obtained from the Department of Justice after her complaint was filed, and the computations of the alleged overcharges were made after the filing of her original complaint but prior to filing the amended complaint pursuant to order of this court to identify and list separately each transaction involved. She previously had examined abstracts of bids and reports of awards of these contracts made available to her while a government employee, and had seen copies of the contracts attached to payment vouchers in Chicago, where she examined them in detail. On several occasions before the termination of her employment, she brought to the attention of her superiors and other government officials the alleged overceiling prices charged by defendant. * * *"

* * *

"The contracts, invoices, vouchers, etc., would disclose on their face whether overceiling charges had been made and false claims submitted, when compared with the applicable maximum price regulations, and the United States would have been in position to proceed against defendant, without more, subject to the defense of procedural 6 applications. If filed, these would have absolved defendant from the wrongdoing charged, and if not filed, would have left defendant without this defense. It is therefore apparent that the 'evidence or information' on which her suit is based was in the possession of the United States, if the language of the statute be literally read."

The United States by formal notice refused to intervene in this case.

In her Statement of the Case, Petitioner has failed to mention that the district court found:

1. The documentary evidence upon which Petitioner bases her case is now and has been for many years in the possession of the United States.

2. Petitioner's status as a federal employee enabled her to examine such documentary evidence.

3. The contracts on which she bases her suit were obtained from the Department of Justice *after* her complaint was filed and the computation of alleged overcharges were made *after* the filing of her original complaint.

4. The information on which Petitioner bases her case was obtained during the course of her employment by the United States.

5. On a number of occasions, while a federal employee, she brought to the attention of her superiors and other government officials her allegations that Respondent had charged the government overceiling prices.

ARGUMENT

PETITIONER'S WRIT SHOULD BE DENIED

I. Petitioner's Claim Is Barred by the Statute of Limitations.

(a) The statute of limitations ruling conflicts with no other decision and has no prospective application.

The ruling below that the Petitioner's claim is barred by the six-year statute of limitations does not conflict with the decision of any court. To the contrary, the decisions are harmonious.

The lower court properly held that the War Time Suspension of Limitations Act, Act of August 24, 1942, ch. 555, 56 Stat. 747; U.S.C. Title 18, § 590a (1940 ed., Supp. II) which suspended "statutes of limitations applicable to offenses . . . *now indictable* . . ." did not toll the six-year statute of limitations applicable to civil actions under the False Claims Act. R.S. § 3494, U.S.C. Title 31, § 235. *Dugan & McNamara, Inc.* v. *United States*, 127 F. Supp. 801 (Ct. Cl. 1955), and *United States* v. *Kolsky*, 137 F. Supp. 359 (E.D. Pa. 1955), had earlier so ruled.

Armour's last allegedly wrongful act having occurred February 15, 1943, the statute of limitations ran until July 21, 1944, the effective date of the amendment of the Suspension Act deleting the phrase "and now indictable." Act of July 1, 1944, c. 358, §§ 19(b), 24(a), 58 Stat. 649, 667 (now codified in U.S.C., Title 18, § 3287). One year, five months and six days of the limitation period had run from February 15, 1943, to July 21, 1944. The statute of limitations commenced to run again on December 31, 1949, the date the termination of hostilities of World War II was proclaimed, 12 F.R. 1. The remainder of the six-year limitations period expired July 24, 1954. Appellant's complaint was filed August 27, 1954, and consequently her claim is barred.

Nor is the question of any prospective importance. The original War Time Suspension of Limitations Act, 18 U.S.C. § 590a (1940 ed. Supp. II), was only in force from August 24, 1942, to July 21, 1944. Any actions to which it would apply would have had to have been commenced on or before January 1, 1956; more than two and one-half years ago.

(b) Since Petitioner's claim is barred by the statute of limitations, the other issues are moot.

The statute of limitations bars Petitioner's entire claim. The issue relating to the standing of former federal employees to recover under the False Claims Act for information gleaned from such employment is thus moot.

II. The Ruling on the Status of Former Government Employees Under the False Claims Act Was Not the Sole Basis of the Decision Below.

The decision below was not based solely on the fact that Petitioner was a former federal employee or that she "suggested" to superiors that "examination" of government records be "extended" to all meat packers (Pet. Br., p. 7). To the contrary, Petitioner "during her employment by the United States [brought] her claim of over-ceiling prices . . . to the attention of her superiors." The thirty-three contracts upon which she bases her suit were obtained from the Justice Department after her original complaint was filed. While a federal employee she examined Armour invoices, payment vouchers, contracts, and other documents in possession of the United States. And, as the lower court found:

> "The contracts, invoices, vouchers, etc., would disclose on their face whether over-ceiling charges had been made and false claims submitted, when compared with the applicable maximum price regulations. . . . It is therefore apparent that the 'evidence or information' on which her suit is based was in the possession of the United States, if the language of the statute be literally read."

Consequently, the sole basis of the decision below is not merely that Petitioner's suit was founded on in-

formation "obtained by reason of her government employment" (Pet. Br., p. 3). The decision is based on the admitted facts that all the documentary evidence in the case is in the possession of the United States; that such documents demonstrate on their face whether there has in fact been an overcharge; that Petitioner's superiors had knowledge of her allegations.

The ruling below that Petitioner's claim was barred because the "information or evidence" on which her suit was based was in the possession of the United States does not conflict with the decisions of this or any other court.

The decision merely applies the language of the False Claims Act to the facts of this case. There is no important question here involved and the prospective application of the decision differs not from the future application of the statute. There is present here no issue calling for this Court's review.

III. Petitioner Is Barred From Basing a False Claims Action Upon Knowledge Obtained by Reason of Her Government Employment

Even assuming the issue Petitioner seeks to raise here was the sole basis of the decisions below, she must fail.

The district court did not overrule this Court's decision in *Marcus* v. *Hess*, 317 U. S. 537, as Petitioner avers. Subsequent to *Marcus*, the Congress amended the False Claims Act to bar an informer action which such action was based on "evidence or information" in the possession of the United States. Act of December 23, 1943, c. 377, §1, 57 Stat. 608. In commenting on the bill, Congressman Hancock stated:

"The temptation and the opportunity is tremendous under the present law for renegotiators, contracting officers of the various purchasing agencies of the Government, and agents for collectors of internal revenue to take advantage of the information they discover in the course of the business to enrich themselves by instigating informer's suits. That is a temptation we wish to remove." (89 Cong. Rec. 10849)*.

This Congressional view coincided with Mr. Justice Jackson's dissent in *Marcus*, where he forcefully stated:

"To accept the view . . . law-enforcement officials could use information gleaned in their investigations to sue as informers for their own profit, would make the law a downright vicious and corrupting one . . . If we were to add motives of personal avarice to other prompters of official zeal the time might come when the scandals of law-enforcement would exceed the scandals of its violation." (317 U.S. at 560-561).**

The trial court below applied the amended law exactly as Congress intended it should. This case presents the particular kind of abuse which the amendment was designed to abolish.

Additionally, Section 4 of the Emergency Price Control Act of 1942, Act of January 30, 1942, C. 26, § 4, 56 Stat. 28, U.S.C. Title 50 App. § 904 (c) (1946 ed.) declares it to be unlawful for any governmental

* See also 89 Cong. Rec. 10876 (1943).

** "It is clear that the amendment [to the Federal False Claims Act] enacted into law the views expressed by Mr. Justice Jackson in his dissenting opinion in United States ex rel. Marcus v. Hess [317 U.S. 537]." United States v. Rippetoe, 178 F. 2d 735, 737 (4th Cir. 1949).

employee to disclose any information obtained under the Act "for personal benefit".

The facts on which Appellant's cause is based were obtained in the course of government employment and she is barred from prosecuting this action.

The record and decision below show the evidence and information were in the possession of the United States and its several responsible agencies. It is significant that these agencies have not instituted suit against the Respondent on these alleged causes nor did they assert them as counterclaims in other actions instituted by the Respondent against the United States. In this case, the Government expressly declined to prosecute the action. The United States has no cause and the Petitioner has none.

CONCLUSION

Since Petitioner's writ of certiorari presents no issue of prospective importance; demonstrates no conflict of decisions; and since Petitioner's claim is clearly barred by the statute of limitations, the petition for a writ of certiorari should be denied.

Respectfully submitted,

PERRY S. PATTERSON
HERBERT J. MILLER, JR.
800 World Center Building
Washington 6, D. C.
Attorneys for Respondent

Of Counsel:

GEORGE E. LEONARD, JR.
JOHN P. DOYLE
Armour and Company
Chicago, Illinois